

**OLD REPUBLIC INSURANCE COMPANY
133 OAKLAND AVENUE
GREENBURG, PENNSYLVANIA 15601-0789**

NAIC COMPANY CODE 24147

WORKERS' COMPENSATION INSURANCE

As of December 31, 2004

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**Old Republic Insurance Company
133 Oakland Avenue
Greenburg, Pennsylvania 15601-0789**

**MARKET CONDUCT
EXAMINATION REPORT**

**Workers' Compensation
As of
December 31, 2004**

Prepared by

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Independent Contract Examiners

October 12, 2005

The Honorable David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Rivera:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and unit statistical report practices of Old Republic Insurance Company's workers' compensation insurance business, has been conducted. The Company's records were examined at the Company's parent corporate office, located at 307 North Michigan Avenue, Chicago, Illinois, 60601. The Company's statutory home office is located at 133 Oakland Avenue, Greenburg, Pennsylvania 15601.

The examination of Workers' Compensation covered the two and one-half year period from July 1, 2002 to December 31, 2004.

A report of the examination of Old Republic Insurance Company is, herewith, respectfully submitted.

Kathleen M. Bergan, CIE

Wayne C. Stephens, CPCU, CIE

Independent Market Conduct Examiners

**MARKET CONDUCT EXAMINATION REPORT
OF THE
OLD REPUBLIC INSURANCE COMPANY**

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COMPANY PROFILE

The Old Republic Insurance Company (hereinafter referred to as “the Company”) is a multi-line stock insurance company domiciled under the laws of Pennsylvania. The Company was originally incorporated as Coal Operators Casualty Company. Coal Operators Casualty Company was purchased by Old Republic Life Insurance Company in 1955 and its name was changed to the current name Old Republic Insurance Company.

The Company has several channels of distribution for soliciting business including brokers and general agents and primarily writes Workers’ Compensation, General Liability and Commercial Automobile lines of insurance.

The Company was licensed in Colorado on May 25, 1954 and is licensed to do business in all fifty (50) states.

The Company’s workers’ compensation direct written premium in 2004 was \$3,024,000 with a .36% market share.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of this examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to workers' compensation. Examination information contained in this report should serve only those purposes. The conclusions and findings of this examination report are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners, the Colorado Division of Insurance and the Insurance Regulatory Examiners Society. In reviewing material for this report, the examiners relied primarily on records and materials maintained by the Company. The examination period covered two and one-half years of the Company's operations, from July 1, 2002 to December 31, 2004.

File sampling was based on a review of underwriting and claims files that were randomly selected by using ACL software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systematic or when due to sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of examination (e.g. classification of employees), and if one or more samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five (5%) were also included.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The examination of Workers' Compensation included the following reviews:

- A. Policies with Experience Modifiers
- B. Policies without Experience Modifiers
- C. Policies in force during 2004
- D. Cancellations
- E. Unit Statistical Plan Reporting
 - 1. Premium Audits
 - 2. Claims Comparison
 - a. Claims on policies with Experience Modifiers
 - b. Claims on policies with Deductibles

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Workers' Compensation policies, audits, billings and Unit Statistical reporting practices to determine compliance with NCCI Manual Rules and Colorado insurance laws as outlined in Exhibit 1.

Exhibit 1

| Law | Subject |
|--------------------|--|
| Section 10-3-1104 | Unfair methods of competition and unfair or deceptive acts or practices |
| Section 10-4-110 | Notice of intent prior to nonrenewal of certain policies of insurance. |
| Section 10-4-110.5 | Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided of certain policies of insurance. |
| Section 10-4-113 | Exemptions. |
| Section 10-4-401 | Purpose – applicability. |
| Section 10-4-403 | Standards for rates-competition-procedure-requirement for independent actuarial opinions regarding 1991 legislation. |
| Section 10-4-413 | Records required to be maintained. |
| Section 10-4-416 | Prohibiting changes in rates or coverages. |
| Section 10-4-421 | Notice of rate increases and decreases. |
| Regulation 1-1-7 | Market Conduct Record Retention |
| Regulation 1-1-8 | Penalties And Timelines Concerning Division Inquiries And Document Requests. |
| Regulation 5-1-10 | Rate and Rule Filing Submissions |
| Regulation 5-1-11 | Risk Modification Plans |
| Regulation 5-3-1 | Workers' Compensation Risk Management Regulation |
| Regulation 5-3-2 | Workers' Compensation Insurance Data Reporting Regulation |
| Regulation 5-3-3 | Concerning Workers' Compensation Deductible Policies in Excess of \$5,000 |
| Regulation 5-3-4 | Concerning Standards for Not-At-Fault Motor Vehicle Accidents Under Workers' Compensation, Loss Limitation in Calculating Experience Modifications and Distribution of Losses in Excess of The Loss Limitation |
| Regulation 5-3-5 | Workers' Compensation Deductible Reimbursement |
| Regulation 6-2-2 | Response to Division Inquiries Concerning Complaints |

Company Operations/Management

The examiners reviewed Company management, implementation and quality controls, record retention and timely cooperation with the examination process.

Contract Forms and Endorsements

Forms and endorsements used by the Company in writing Workers' Compensation policies containing Colorado exposures are filed with the Colorado Division of Insurance by the National Council on Compensation Insurance and no review was conducted of these forms.

Audited Policies

For the period under examination, the examiners randomly selected the following underwriting samples to determine compliance with underwriting and rating requirements:

| Underwriting Lists July 1, 2002 – December 31, 2003 | Population | Sample Size | Percentage to Population |
|--|-------------------|--------------------|-------------------------------------|
| Policies with Experience Modifiers | 132 | 50 | 38% |
| Policies without Experience Modifiers | 25 | 25 | 100% |
| Cancelled Policies | 18 | 18 | 100% |
| | | | |
| January 1, 2004 – December 31, 2004 | | | |
| Policies in force during 2004 | 112 | 50 | 45% |

Rating

Workers' Compensation rate and rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance were reviewed for the period under examination. This information was then compared against samples of 2002 and 2003 policies with experience modifiers and policies without experience modifiers in addition to a sample of 2004 in force policies to determine compliance with NCCI filed loss costs factors, Company filed loss cost multipliers, schedule rating and payroll information. In addition, a review was performed on compliance with NCCI promulgated experience modifiers, if any, and NCCI manual rules concerning proper employee classifications, officer payrolls, fixed premium determinations for officers, partners or sole proprietors and proper calculation of terrorist coverage premiums. In addition, there was a review of compliance with Colorado cost containment, designated medical provider and deductible disclosure requirements.

Unit Statistical Reports

The audited and billed policies with experience modifiers and policies with no modifiers were to be compared to the audit and premium information on the Unit Statistical Reports to verify the information was transmitted correctly to the NCCI.

For the period under examination, the following samples of claims were requested from audited policies with experience modifiers and from policies with deductibles to determine compliance with statistical reporting requirements of the NCCI. At the time of the writing of this examination report, the Company was unable to provide the majority of claim information for review.

Workers' Compensation Unit Statistical Reports July 1, 2002-December 31, 2003

| Claims Lists | Population | Sample Size | Percentage to Population |
|--|-------------------|--------------------|---------------------------------|
| Claims from Policies with Experience Modifiers | 520 | 268 | 52% |
| Claims from Policies with Deductibles | 1148 | 530 | 46% |

The maximum number of claims examined from any policy's statistical report was twenty-five (25) and these were chosen by interval sampling.

EXAMINATION REPORT SUMMARY

The examination resulted in seven (7) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

Company Operations and Management:

In the area of company operations and management, two (2) compliance issues are addressed in this report. In regard to Company Operations and Management practices, it is recommended that the Company review its procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The issues in this phase of the examination are as follows:

- Failure of the Company, to provide claim payments and reserve documents required to perform the review and comparison of information reported to the NCCI in a timely manner.
- Failure of the Company, in some cases, to maintain records required when writing workers' compensation policies which contain Colorado exposures.

Underwriting and Rating:

In the area of underwriting and rating, four (4) compliance issues are addressed in this report. An issue may arise from non-compliance with Colorado insurance law requirements whenever policies are issued to Colorado insureds or contain Colorado exposures. In regard to these underwriting and rating practices, it is recommended that the Company review its underwriting and rating procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The issues in this phase of the examination are identified as follows:

- Failure of the Company to provide the insured with a form to indicate their awareness of the premium differential available when an insured selects a cost containment option and/or a designated medical provider and to retain this signed form in the insured's underwriting file.
- Failure of the Company, in some cases, to implement loss cost multipliers as filed with the Colorado Division of Insurance for workers' compensation policies with Colorado exposure.
- Failure of the Company, in some cases, to apply the correct audit or rating rule methodology when calculating premiums on workers' compensation policies which contain Colorado exposures.
- Failure, in some cases, to maintain sufficient documentation to justify the application of schedule rating debits to files without experience modifications.

NCCI Unit Statistical Reports

Issues can result from failure to follow Colorado statutory and regulatory requirements and the requirements of the NCCI when reporting policy and claim information to the NCCI.

There was one (1) issue addressed in this phase of the examination:

- Failure of the Company, in some cases, to accurately report unit statistical card information to NCCI.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

PERTINENT FACTUAL FINDINGS

OLD REPUBLIC INSURANCE COMPANY

COMPANY MANAGEMENT AND OPERATIONS

PERTINENT FACTUAL FINDINGS

Issue A: Failure of the Company, to provide claim payments and reserve documents required to perform the review and comparison of information reported to the NCCI in a timely manner.

Regulation 1-1-8: Penalties And Timelines Concerning Division Inquiries And Document Requests, states:

Section 1 Authority

This regulation is promulgated pursuant to §§ 10-1-109, 10-2-104, 10-3-109(3), and 10-16-109, C.R.S.

Section 2 Background And Purpose

The purpose of this regulation is to prescribe the time period in which all persons and entities shall respond to Division inquiries, including, but not limited to, document and information requests during market conduct and financial examinations, investigations of complaints, and any other formal or informal investigation or examination conducted for the purpose of determining compliance with Colorado insurance law. In addition, the purpose of this regulation is to prescribe the penalties for failure to respond to Division of Insurance inquiries within the timeframes specified in this regulation.

Section 3 Applicability And Scope

This regulation shall apply to all persons and entities over whom the Division of Insurance has authority, including, but not limited to, producers, insurers, health maintenance organizations and insurance agencies for all lines of insurance. This regulation does not apply where a different timeframe for responding to Division of Insurance inquiries or providing documentation or information is specifically established by Colorado statute or Division of Insurance regulation.

Section 4 Definitions: As used in this regulation:

A. "Division" shall mean the Colorado Division of Insurance.

B. "Incomplete response" shall mean a response that does not substantially address the inquiry, as determined by the Division.

C. "Inquiry" shall mean any written Division request to any person, for documents, information or an explanation or response. Inquiry includes, but is not limited to, market conduct examination comment forms, financial examination request forms, and information requests arising from complaints received by the Division.

D. "Examination Request/Comment Form" means a request for information made during the course of a formal market conduct or financial examination under §§ 10-1-201 to 207, C.R.S., and includes:

1) A written request from the examiner for books, records, materials, information, or data necessary for examination of the company's operations; and 2) A written comment from the examiner which identifies concerns related to company actions and requires additional information or acknowledgment from the company.

E. "Person" shall have the same meaning as in § 10-2-103(8), C.R.S.

F. "Response" means all written information provided to the Division from the person to whom the inquiry is made.

Section 5 Rules

A. Unless another time period is specified by the Division in writing, every person shall provide a complete response to Examination Request/Comment Forms within ten (10) calendar days from the date on the form.

B. Except for responses to Examination Request/Comment Forms, and unless another time period is specified by statute, regulation or by the Division in writing, every person shall provide a complete response in writing to any inquiry from the Division within thirty (30) calendar days from the date of the inquiry.

C. If additional time is required to respond to any Division inquiry, the person shall submit a request for an extension of time in writing to the Division employee or examiner making the inquiry. The request for an extension of time shall be made within the original response period established in this regulation, and shall state in detail the reasons necessitating the extension. Extensions are granted at the discretion of the Division for good cause shown. When a request for extension is granted, the person shall respond within the new time period granted. If an extension is not granted, the person shall respond within ten (10) calendar days of the notice that the extension was not granted, and is subject to the imposition of appropriate penalties from the original due date.

D. The Division will calculate the applicable time periods from the date of the correspondence from the Division to: 1) if the response is mailed, the postmark date on the response; 2) if the response is hand-delivered to the Division's offices, the date identified by the Division's date received stamp; 3) if the response is hand-delivered directly to Division staff, Division representatives or examiners off of Division premises, the date the staff, representative or examiner receives the response as acknowledged by the staff, representative or examiner; 4) if the response is transmitted electronically, the electronically recorded date; and 5) if the response is faxed, the date shown on the fax transmission sheet.

E. Failure to provide a response, or providing an incomplete response to Division inquiries at any point in the handling of a matter, including during the course of a financial or market conduct examination, subjects the person to immediate imposition of a minimum \$500 fine per act or occurrence.

Section 6 Enforcement:

Noncompliance with the requirements and timeframes specified in this regulation may result, after proper notice and hearing, in the imposition of any sanctions made available in Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspension or revocation of license.

A complete review of claim payments, reserve information and other claim related information could not be performed due to the fact that the requested documentation could not be obtained in a timely manner either by the Company or its Third Party Administrators, and therefore, could not be traced to the unit statistical reports.

The following shows the significance of policies with claims that could not be provided for review:

**Workers' Compensation Policies with Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 132 | 26 | 23 | 89% |

The sample of policies that had Experience multipliers with claims was twenty-six (26), but the Company was unable to provide the requested claim information needed to trace the claims, reserve changes and other claim related documents to the NCCI unit statistical cards for verification that the information captured by the Company was accurate for twenty-three (23) of the cases.

**Workers' Compensation Policies with Deductibles
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 68 | 50 | 39 | 78% |

As with the review for claims with Experience modifiers, the Company could not produce claim information for thirty-nine (39) policies with deductibles out of a sample of fifty (50) in which there were claims incurred.

Recommendation Number 1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 1-1-8. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will maintain its files in order to be able to provide documents in a timely manner for future examinations when writing workers' compensation policies containing Colorado exposures.

Issue B: Failure of the Company, in some cases, to maintain records required when writing Workers' Compensation policies which contain Colorado exposure.

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

(1) Every insurer...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it...Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Regulation 1-1-7, Market Conduct Record Retention, states, in part:

Section 1. Authority

This regulation is promulgated under the authority of § 10-1-109(1), C.R.S.

Section 2. Basis And Purpose

The purpose of this amended regulation is to clarify definitions and rules that provide for retention and maintenance of records required only for market conduct purposes.

Section 3. Definitions

A. "Application records" mean any written or electronic application form, any enrollment form, any document used to add coverage under an existing policy, any questionnaire, telephone interview form, paramedical interview form, or any other document used to question or underwrite an applicant for a policy issued by an insurer or for any declination of coverage by an insurer.

B. "Inquiry" means a specific question, comment form or request made in writing to an insurer or its representative by a market conduct examiner authorized or designated by the commissioner.

C. "Examiner" shall have the same meaning as in § 10-1-202, C.R.S.

Section 4. Records Required For Market Conduct Purposes

A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

Section 5. Policy Records

A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation.

B. Policy records shall include at least the following:

(1) The actual, completed application for each contract, where applicable;

(a) The application shall bear the signature, either written or digitally authenticated, where required, of the applicant whenever the insurer intends to retain any right to contest any warranty, representation or condition contained in the application; or

(b) The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with any information needed to determine the identity of the producer;

(2) Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. A separate copy of the record need not be maintained in the individual policy to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy, as well as the actual policy, can be retrieved or recreated;

(3) Any binder with terms and conditions that differ from the terms and conditions of the policy subsequently issued; and

(4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

**Workers' Compensation Policies with Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|-------------------|--------------------|-----------------------------|-----------------------------|
| 132 | 50 | 17 | 34% |

An examination of fifty (50) policies with Colorado exposures, with experience modifiers, representing 38% of all workers' compensation policies with experience modifiers written by the Company during the period of July 1, 2002 to December 31, 2003, showed seventeen (17) policy files that failed to have audit worksheets and/or detailed description of duties for the employees on voluntary audits submitted by the insureds. Therefore, the classifications and premiums charged on the audit billing statements could not be verified.

Recommendation Number 2:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-4-413 and Colorado Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that the Company will maintain audit worksheets and/or other documentation to show a description of the duties of employees to enable the verification of the classifications used on the billing.

UNDERWRITING AND RATING
PERTINENT FACTUAL FINDINGS

Issue C: Failure of the Company to provide the insured with a form to indicate their awareness of the premium differential available when an insured selects a cost containment option and/or a designated medical provider and to maintain this signed form in the insured's underwriting file.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states, in part:

(III) RULES...

(D) Workers' Compensation Cost Containment Disclosures

All workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the availability of cost containment certification by the Colorado Workers' Compensation Cost Containment Board and the potential premium savings on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy. Such disclosure applies regardless of whether or not a risk is experience or schedule rated. *Insurers shall require that the insured business entity indicate* [emphasis added] on a form developed by the insurer, which states that the business entity is aware of the premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board. *This form shall be made part of the insured business entity's underwriting file.* [Emphasis added]

On an annual basis, all workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the premium differential on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy when the policyholder has selected a designated medical provider. Such disclosure applies regardless of whether a risk is experience rated or schedule rated. *Insurers shall require that the insured business entity indicate* [emphasis added] on a form developed by the insurer, which states that the business entity is aware of the premium differential for selecting a designated medical provider. *This form shall be made part of the insured business entity's underwriting file.* [Emphasis added]

The following charts illustrate the significance of errors versus the populations and samples examined:

**Workers' Compensation Policies with Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 132 | 50 | 50 | 100% |

An examination of fifty (50) policies with Colorado exposures, with experience modifiers, representing 38% of all workers' compensation policies with experience modifiers, written by the Company during the period July 1, 2002 to December 31, 2003, showed fifty (50) exceptions (or 100% of the sample) in which a signed form in the underwriting file is required to show that insureds have indicated their awareness of the premium differential available if they had chosen a medical cost containment option and/or if they had selected a designated medical provider.

**Workers' Compensation Policies without Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 25 | 25 | 25 | 100% |

An examination of twenty-five (25) policies with Colorado exposures without experience modifiers, representing 100% of all workers' compensation policies without experience modifiers, written by the Company during the period July 1, 2002 to December 31, 2003, showed twenty-five (25) files (or 100% of the sample) in which a signed form in the underwriting file is required to show that insureds have indicated their awareness of the premium differential available if they had chosen a medical cost containment option and/or if they had selected a designated medical provider.

**Workers' Compensation Policies
January 1, 2004 to December 31, 2004**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 112 | 50 | 50 | 100% |

An examination of fifty (50) policies, with Colorado exposures, representing 45% of all workers' compensation policies written by the Company during the period January 1, 2004 to December 31, 2004, showed fifty (50) files (or 100% of the sample) in which a signed form in the underwriting file is required to show that insureds have indicated their awareness of the premium differential available if they had chosen a medical cost containment option and/or if they had selected a designated medical provider.

Recommendation Number 3:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that the Company will maintain a copy of a signed form in an insured's underwriting file, on which, the insured has indicated their awareness of the premium differential available, if they were to choose a medical cost containment option and if they were to select a designated medical provider, in compliance with Colorado insurance laws.

Issue D: Failure of the Company, in some cases, to implement loss cost multipliers as filed with the Colorado Division of Insurance for workers' compensation policies with Colorado exposure.

Section 10-4-401, C.R.S., Purpose – applicability, states, in part:

(3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows...

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states, in part:

Section 5. Rules...

C. Rule Filing General Requirements...

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

3. Companies may adopt, by reference, rating and/or advisory organization insurance rating plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals, and modifications of any of the foregoing. A completed copy of the appropriate filing form prescribed by the Commissioner in a separate Bulletin must accompany the filing.

In the review of the policies it was noted that from April 1, 2003 through December 31, 2003, the filed loss cost multiplier of 1.52 was not implemented as filed with the Colorado Division of Insurance. This problem was discovered by the Company also, during its preparation for this examination.

The following chart illustrates the significance of errors versus the population and sample examined:

**Workers' Compensation Policies with Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 132 | 50 | 21 | 42% |

An examination of fifty (50) policies with experience modifiers, representing 38% of all workers' compensation policies with experience modifiers which contain Colorado exposures, written by the Company during the period July 1, 2002 to December 31, 2003, showed twenty-one (21) exceptions in which incorrect loss cost multipliers were used to calculate the rates used in audit billings. These errors resulted in premium undercharges of \$58,572.

**Workers' Compensation Policies without Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 25 | 25 | 3 | 12% |

An examination of twenty-five (25) policies without experience modifiers, representing 100% of all workers' compensation policies without experience modifiers which contain Colorado exposures, written by the Company during the period July 1, 2002 to December 31, 2003, showed three (3) exceptions (or 12% of the sample) in which incorrect loss cost multipliers were used in calculating the rates used on audit billings. These errors resulted in premium undercharges of \$906.

Recommendation Number 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-401, 10-3-1104, C.R.S, and Colorado Regulation 5-1-10. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it has taken the appropriate steps to ensure that it will apply correct loss costs multipliers as filed with the Colorado Division of Insurance to policies with Colorado exposures in compliance with Colorado insurance laws.

Issue E: Failure of the Company, in some cases, to apply the correct audit or rating rule methodology when calculating premiums on workers' compensation policies which contain Colorado exposures.

Section 10-4-401, C.R.S., Purpose – applicability, states, in part:

(3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows...

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(2) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states, in part:

Section 5. Rules...

C. Rule Filing General Requirements...

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The following errors included failure to charge the terrorism charge which was effective 1/1/2003, errors in calculation of Increased Limits charges, an incorrect rate applied and use of incorrect experience modifiers.

The following chart illustrates the significance of errors versus the population and sample examined:

**Workers' Compensation Policies with Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 132 | 50 | 3 | 6% |

An examination of fifty (50) policies with Colorado exposures, with experience modifiers, representing 38% of all workers' compensation policies with experience modifiers, written by the Company during the period July 1, 2002 to December 31, 2003, showed three (3) exceptions (or 6% of the sample) in which the terrorism coverage charge of \$.03 per hundred of payroll was not charged. These errors resulted in total undercharges of \$991.

**Workers' Compensation Policies without Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 25 | 25 | 8 | 32% |

An examination of twenty -five (25) policies with Colorado exposures without experience modifiers, representing 100% of all workers' compensation policies without experience modifiers, written by the Company during the period July 1, 2002 to December 31, 2003, showed eight (8) files (or 32% of the sample) in which there were errors in calculation of the audit premium. Seven (7) errors involved the failure to use the Colorado minimum premium for Increased Limits charges as shown in the NCCI manual rules. These errors resulted in total undercharges of \$398.

In addition, one (1) error was caused by failing to charge the terrorism coverage charge of \$.03 per hundred of payroll, resulting in an undercharge of \$530.

Recommendation Number 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-401, 10-3-1104, C.R.S, and Colorado Regulation 5-1-10. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it has taken the appropriate steps to ensure that it will apply correct rating methodology when rating policies with Colorado exposures in compliance with Colorado insurance laws.

Issue :F Failure, in some cases, to maintain sufficient documentation to justify the application of schedule rating debits to files without experience modifications.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance . . .

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-401, C.R.S., Purpose - applicability, states, in part:

(1) The purpose of this part 4 is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions, and to improve the availability and reliability of insurance. For such purposes, the division of insurance of the department of regulatory agencies and the head of the division, the commissioner of insurance, shall be charged with the execution of this part 4.

(3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows...

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-4-403, C.R.S., - Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation.

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:

(a) Rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.

(b) Concerning inadequacy, rates are not inadequate unless clearly insufficient to sustain projected losses and expenses, or the use of such rates, if continued, will tend to create a monopoly in the market.

Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss

exposures, so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104 (1) (f) shall apply.

(2)(a) In determining whether rates comply with the excessiveness standard, the inadequacy standard, and the unfair discrimination standard, the following criteria shall apply:

(I) Concerning basic factors in rates, due consideration shall be given to past and prospective loss and expense experience, to catastrophe hazards and contingencies, to events or trends, to loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment;

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

(1) Every insurer...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it...Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

(B) RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the Commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

a. The application for each policy, if any;

b. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

c. Other information necessary for reconstruction of the rating and underwriting of the policy.

The following illustrate the significance of errors versus the population and sample examined:

**Workers' Compensation Policies without Experience Modifiers
From July 1, 2002-December 31, 2003**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 25 | 25 | 18 | 72% |

A review of twenty-five (25) policies without experience modifiers, representing 100% of all workers' compensation policies without experience modifiers which contain Colorado exposures written by the Company during the period July 1, 2002 to December 31, 2003, showed all eighteen (18) aviation files did not contain information to demonstrate the reason that the aviation insureds were charged a schedule rating plan debit premium. In one instance the insured was awarded a safety certificate for compliance from the company affiliate that administrates the aviation business and was still surcharged 25% or the maximum Schedule Rating Modification. In all cases, the files contained no loss control inspection reports, physical inspection reports or other adequate documentation showing the reason for the 25% schedule rating plan debit. As a result, a higher premium was charged to only those insureds that were in the aviation classification of business. During the review of the Company underwriting files, it was noted that the Company did initiate physical inspections reports beginning in 2004.

Recommendation Number 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, Section 10-4-401, Section 10-4-403, Section 10-4-413 and Colorado Regulation 1-1-7. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will maintain policy files which contain adequate documentation to support any variance in the rates charged from the scheduled rating plan.

WORKERS' COMPENSATION

UNIT STATISTICAL REPORTS/CLAIMS

PERTINENT FACTUAL FINDINGS

Issue G: Failure of the Company, in some cases, to accurately report unit statistical card Information to NCCI.

Section 10-4-402, C.R.S., Definitions, states in part:

- (1.3) "Classification system" or "classification" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.
- (3) "Rating organization" means every person, other than an admitted insurer, which has as its object or purpose the making of pure premium rates, rating plans, or rating systems. Two or more admitted insurers, other than insurers having a common ownership or operating in this state under common management or control, which act in concert for the purpose of making pure premium rates, rating plans, or rating systems shall be deemed to be a rating organization unless they operate within the specific authorizations contained in sections 10-4-404, 10-4-409, 10-4-411, and 10-4-412. No single insurer, joint underwriting association, actuarial or legal consultant, insurer or insurers under common control or management, or their employees or managers shall be deemed to be a rating organization.

Section 10-4-404, C.R.S., Rate administration, states in part:

- (1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

In addition, the NCCI Workers' Compensation Statistical Plan Manual states in part:

PART 4: LOSS INFORMATION

7. Indemnity Incurred Amounts

...The amount reported as incurred indemnity including all paid and outstanding benefits (vocational rehabilitation, compensation paid to the deceased prior to death, burial expenses, and payments to the state or to special funds).

8. Medical Incurred Amounts

- Reserves for future payments
- All payments to doctors and hospitals
- Physical rehabilitation costs
- Medical loss items, such as transportation expenses associated with medical treatment

35. Deductible Reimbursement (Amount)

Report the deductible reimbursement received from the insured. Deductible reimbursements must be reported for states that require net reporting of losses for experience rating. In net experience rating states, the net loss will be calculated using the deductible reimbursement amount. All losses must be reported on a gross basis..., including losses that were reimbursed by an indemnity and/or medical deductible payment by the insured. If reimbursements are received after a first or subsequent valuation, report the reimbursement on the next valuation.

During the course of the examination, the Company could not provide claim documentation for a complete review of all claims. The Company did provide claims information for seventy-eight (78) claims on eleven (11) policies. From these seventy-eight (78) claims, detail was traced from Company records and documentation to the unit statistical reports to NCCI.

Through this review it was noted that in three (3) instances the incorrect classification code was reported. In addition, three (3) unit statistical reports contained incorrect medical payments for the valuation period and thirty (30) claims could not be traced to the unit statistical reports as there was no identifier on the computer generated claims document which identified the claimant.

Recommendation Number 7:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-402, 10-4-404, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it has taken the appropriate steps to ensure that it will correctly report unit statistical information to NCCI in order to ensure compliance with Colorado insurance laws.

SUMMARY OF RECOMMENDATIONS

| <u>ISSUE</u> | <u>RECOMMENDATION NUMBER</u> | <u>PAGE NUMBER</u> |
|--|---|-------------------------------|
| Company Operations and Management | | |
| Issue A: Failure of the Company, to provide claim payments and reserve documents required to perform the reviews and comparisons of information reported to the NCCI in a timely manner. | 1 | 16 |
| Issue B: Failure of the Company, in some cases, to maintain records required when writing workers' compensation policies which contain Colorado exposures. | 2 | 19 |
| Underwriting/Rating | | |
| Issue C: Failure of the Company to provide the insured with a form to indicate their awareness of the premium differential available when an insured selects a cost containment option and a designated medical provider and to retain this form in the insured's underwriting file. | 3 | 22 |
| Issue D: Failure of the Company, in some cases, to implement loss cost multipliers as filed with the Colorado Division of Insurance for workers' compensation policies with Colorado exposure. | 4 | 24 |
| Issue E: Failure of the Company, in some cases, to apply the correct audit or rating rule methodology when calculating premiums on workers' compensation policies which contain Colorado exposures. | 5 | 26 |
| Issue F: Failure, in some cases, to maintain sufficient documentation to justify the application of schedule rating debits to files without experience modifications. | 6 | 29 |
| Unit Statistical Reports | | |
| Issue G: Failure of the Company, in some cases, to Accurately report unit statistical report information to NCCI. | 7 | 32 |

Independent Market Conduct Examiners

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Participated in this examination and in the preparation of this report